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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

WAYNE BERRY, a Hawaii citizen,)	CIVIL NO. CV03-00385 SOM-LEK
	)	(Copyright)
Plaintiff,)	
)	
v.	)	DEFENDANTS' JOINT OBJECTION TO
	)	PLAINTIFF WAYNE BERRY'S FIRST
HAWAIIAN EXPRESS SERVICE,	)	SUPPLEMENTAL INSTRUCTION RE:
INC., a California	)	STATUTORY DAMAGES FOR WILLFUL
corporation; et al.	)	INFRINGEMENT; CERTIFICATE OF
	)	SERVICE
)	
Defendants.)	
	)	Judge: Hon. Susan Oki
	)	Mollway
)	
	)	Trial: February 28, 2006
)	

**DEFENDANTS' JOINT OBJECTION TO
PLAINTIFF WAYNE BERRY'S FIRST SUPPLEMENTAL INSTRUCTION RE:
STATUTORY DAMAGES FOR WILLFUL INFRINGEMENT**

The Defendants hereby submit their Joint Objection to
Plaintiff Wayne Berry's First Supplemental Instruction re:
Statutory Damages for Willful Infringement:

Plaintiff's proposed instruction wrongly assumes the
Court will undo her rulings that the Defendants inadvertently
infringed, and instead, allow him to pursue willful infringement
against them. Unless and until there is an order in that regard,
which there is no basis for making, Plaintiff's proposed
instruction violates the Court's January 26, 2005 and June 27,
2005 summary judgment orders. See Order Granting Defendant
Foodland's Motion for Summary Judgment; Granting Defendant Hawaii

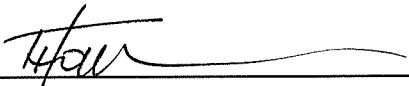
Transfer Company's Motion for Summary Judgment; and Granting in Part, Denying in Part Defendants Dillon, Noa, and Christensen's Motion for Summary Judgment (Jan. 26, 2005) at 33-34, 41; Order Granting in Part, Denying in Part Berry's Motion for Summary Judgment; Order Granting C&S Logistics of Hawaii, LLC, C&S Wholesale Grocers, Inc., C&S Acquisition, LLC, ES3, LLC, and Richard Cohen's Motion for Summary Judgment; Order Granting Guidance Software, Inc., and Michael Gurzi's Motion for Summary Judgment; Order Granting in Part, Denying in Part Remaining Defendants' Motion for Summary Judgment (Jun. 27, 2005) at 12, 28-29, 39-40.

Plaintiff has no basis for an instruction that applies to all Defendants when the very motion he filed seeking relief for alleged willful infringement is limited only to Defendants PCT and Mark Dillon. There is no basis in fact or in law for Plaintiff's instruction, and the Court should reject it.

Dated: Honolulu, Hawaii, January 23, 2006.

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